

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
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DATE FILED: 11/26/2019

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MIGUEL SUAREZ-MARTINEZ,

:  
Petitioner, :  
: 18-CV-897 (VEC)  
-against- : 15-CR-165 (VEC)

UNITED STATES OF AMERICA, : ORDER  
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:

Respondent. :  
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VALERIE CAPRONI, United States District Judge:

WHEREAS on November 25, 2019, the Government and Petitioner appeared for a conference before this Court;

WHEREAS Petitioner asserted, *inter alia*, that 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague and therefore that his conviction under 18 U.S.C. § 924(c), Count II of the S2 Superseding Information, Dkt. 20, should be vacated pursuant to 28 U.S.C. § 2255;

WHEREAS on June 24, 2019, the Supreme Court held in *United States v. Davis*, 139 S. Ct. 2319, 2336 (2019), that Section 924(c)(3)(B) “is unconstitutionally vague”;

WHEREAS the Government agreed to vacate Petitioner’s conviction for violating 18 U.S.C. § 924(c) as charged in Count II of the S2 Superseding Information;

WHEREAS pursuant to an agreement with the Government, Petitioner waived indictment, Dkt. 99, and the Government filed an S3 Superseding Information, Dkt. 100; and

WHEREAS the Court accepted Petitioner’s plea of guilty as to Count I of the S3 Superseding Information;

IT IS HEREBY ORDERED that on motion of the Government, Petitioner’s conviction on Count I of the S2 Superseding Information is vacated and that count is dismissed and Petitioner’s conviction on Count II of the same is vacated.

IT IS FURTHER ORDERED that the Court will re-sentence Petitioner on **January 31, 2020, at 3:00 p.m.** Sentencing submissions must be filed by **January 17, 2020**.

IT IS FURTHER ORDERED that the Clerk of Court is directed to close the open motions on Dkts. 70 and 77 in 15-CR-165 and is directed to close 18-CV-897.

**SO ORDERED.**

Date: **November 26, 2019**  
**New York, NY**

  
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**VALERIE CAPRONI**  
**United States District Judge**